

# Continuity and Discontinuity of the Constitutional Monarchy from a Transnational Perspective

The Netherlands-Belgium (1815-1831)

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The constitutional monarchy as an essential 'modern' state form of the restoration period was intended to restore order and stability in Europe. In this respect, there is more of a break than continuity between the constitutional model that William I introduced in 1814-1815 and the constitutional monarchy to which Leopold I, the first king of the Belgians, had to subject himself in 1831. The specific authoritarian interpretation that William I gave to his function was one of the factors that helps to explain the Belgian revolution. It is therefore logical that the revolution, as such, produced a constitution that firstly, in general was far more democratic and, secondly, specifically restricted the power of the king. The new Belgian constitutional monarchy of 1830-1831 did not keep William I's 'heritage' intact: on the contrary, the constitutional definition of kingship in Belgium, for that time, was an ultra-liberal, modern answer to the 'William I system'.

*Continuïteit en discontinuïteit van de constitutionele monarchie vanuit een transnationaal perspectief. Nederland-België (1815-1831)*

De constitutionele monarchie moest als een essentieel 'moderne' staatsvorm in het restauratietijdperk voor een herstel van orde en stabiliteit zorgen in Europa. Er is op dit punt eerder sprake van een breuk dan van continuïteit tussen het grondwettelijk model dat Willem I in 1814-1815 invoerde in het Verenigd Koninkrijk der Nederlanden en de constitutionele monarchie waaraan Leopold I zich als eerste koning der Belgen in 1831 moest onderwerpen. De specifieke interpretatie en

autoritaire invulling die Willem I aan zijn functie gaf, was één van de factoren die de Belgische revolutie mee helpt verklaren. Het is dus logisch dat de revolutie als zodanig een grondwet opleverde die ten eerste in het algemeen veel democratischer was, en ten tweede specifiek de macht van de koning sterk inperkte. De Belgische grondwettelijke monarchie die uit een revolutie werd geboren, hield de ‘erfenis’ van Willem I dus niet intact: de grondwettelijke omschrijving van het koningschap was integendeel een voor die tijd ultraliberaal en modern antwoord op het ‘systeem-Willem I’.

In the recently revised textbook, *Geschiedenis van de Nederlanden*, originally published in 1993, Jan Roegiers (†) and Niek van Sas make a plea for viewing the tensions within the United Kingdom of the Netherlands that led to the 1830 revolution from a broader European perspective. That would prevent the crisis from being explained predominantly or even exclusively in terms of a ‘national’ clash between North and South. The growing influence of liberalism – that sometimes cut across, then at other times criss-crossed or reinforced the other fundamental fault lines – then comes more clearly into focus. In any event, in independent Belgium, a new generation of liberals’ criticism of the authoritarian governing practices of the monarchs of the restoration led to a modernisation of the political system far earlier than in the Netherlands itself.<sup>1</sup> In this contribution, I focus on the constitutional monarchy as an essentially ‘modern’ state form that in the restoration period was intended to restore order and stability. In this respect, there is more of a break than continuity between the constitutional model that William I introduced in 1814-1815 and the constitutional monarchy to which Leopold I had to subject himself in 1831. The specific authoritarian interpretation that William I gave to his function was one of the factors that helps to explain the Belgian revolution. Therefore it is logical that the revolution, as such, produced a constitution that, firstly, was in general far more democratic and, secondly, specifically restricted the power of the king. According to Leopold, it was precisely the virulent opposition to William that was to blame for the fact that the king in the new Belgium was equated as closely as possible to a president.<sup>2</sup> Leopold should know. Coming from the feudal mini state of Saxe-Coburg-Saalfeld, he had lived in Great Britain from 1816 to 1831, at that time the most advanced parliamentary monarchy in Europe. Moreover, it was a country that had been through a ‘preserving’ rather than a ‘destroying’ revolution. In Leopold’s eyes, in 1830 in the absence of a head of state, ‘a band of crazy democrats’ had fabricated a constitution that went far further than the Bill of Rights.

1 Jan Roegiers and N.C.F. van Sas, ‘Revolutie in Noord en Zuid’, in: Hans Blom and Emiel Lamberts (eds.), *Geschiedenis van de Nederlanden* (Amsterdam 2015) 308-310.

2 Gita Deneckere, *Leopold I. De eerste koning van Europa* (Antwerp 2011) 368.

Indeed it is enlightening to study the history of the constitutional monarchy in a transnational context. The development of political historiography however, is to this day based too strictly on a national model in both the Netherlands and Belgium. It is therefore not easy to answer on the basis of those historiographic traditions the question why in 1830 the liberal opposition of North and South did not unite in their struggle against the autocratic rule of William I.

### European context of the creation of the modern monarchy

For the major European powers, with Great Britain at the fore, the United Kingdom of the Netherlands was the cornerstone of the peace and order sought in post-Napoleonic Europe. Without the Great Powers, in other words, there would have been no United Kingdom of the Netherlands. In 1813-1814 there was no question of an autonomous development into an independent nation state. There was no movement or group striving 'from below' for the unification of North and South, let alone an uprising or revolution from which the new state could derive its legitimacy. At this point we come to an interesting paradox: Belgium is often seen as an artificial construction with a foreign king, a country that had the Great Powers to thank for its existence and survival. The Netherlands and, by extension, the (United) Kingdom of the Netherlands may seem more of a 'natural' nation these days, or at least an 'historic' nation, which in 1830 missed its chance in its date with history. That historical image was constructed in retrospect. It is only one version within a broad range of, in essence, national narratives. In both the Netherlands and Belgium, national historiography has overwritten the original story of the birth of the (United) Kingdom of the Netherlands as a palimpsest.<sup>3</sup>

According to recent international literature, the new monarchies that came into existence in the context of the Congress of Vienna, such as the United Kingdom of the Netherlands, can be considered less 'restoration' monarchies than order-keeping institutions of an essentially new international order. In various European crises from the 1820s onwards, with peaks in 1830 and 1848, in the spirit of the Holy Alliance the crowned heads several times mobilised the European monarchy to defend themselves

3 See N.C.F. van Sas, 'De Nederlanden en Europa, 1815-1830', in: *Algemene Geschiedenis der Nederlanden*, XI (Haarlem 1983) 279-290; idem, *Onze natuurlijkste bondgenoot. Nederland, Engeland en Europa, 1813-1831* (Groningen 1985); Emiel Lamberts, 'Het Verenigd Koninkrijk als Europese creatie', in: Ido de Haan, Paul Den Hoed, Henk te

Velde (eds.), *Een nieuwe staat. Het begin van het Koninkrijk der Nederlanden* (Amsterdam 2013) 113-133; Gita Deneckere, "'Almost Romantick". Het Huis van Oranje in het Europees Concert 1813-1815', in: Remieg Aerts and Gita Deneckere (eds.), *Het (on)Verenigd Koninkrijk 1815-1830-2015. Een politiek experiment in de Lage Landen* (Rekkem 2015) 24-39.

against their mutual internal enemies – liberalism, nationalism and socialism. For the supranational monarchical alliance, peace and order in Europe took precedence over the national interests of individual nation states.<sup>4</sup>

Due to the specific way in which the (United) Kingdom of the Netherlands was created from the top downwards, its democratic support was less great and hence its institutions were less democratic than in the later Belgium, which was born from a revolution. It was therefore easier for William I to position himself as the authoritarian *Ancien Régime* king in relation to his nation, while Leopold I was obliged to cope with an extremely liberal constitution and a modern pact between monarch and people. William (° 1772) thus profiled himself far less as a constitutionally bound king than Leopold (° 1790), who, as king of the Belgians, was to write himself far more into the new history of post-Napoleonic Europe. After all, there were eighteen years between them, in a period in which the world had changed dramatically in a single generation.

### The constitutional monarchy in the Kingdom of the Netherlands

The choice for a monarch was anything but evident in the new Kingdom of the Netherlands. While the independent Netherlands, in principle, had a high level of historical legitimacy, given the pedigree of the independent Republic of the United Netherlands (1588-1795) in the Golden Age, the monarchy as a form of government was at odds with the political tradition and culture in a republic. The first king of the Netherlands, paradoxically enough, was Louis Napoleon Bonaparte, in the period 1806-1810. However awkward it was to build on that ‘tradition’, for Viscount Castlereagh, British minister of foreign affairs and a key figure in the creation of the Kingdom of the Netherlands, the new state, at any rate, had to be *plus monarchique* than in the past.

Indeed, in 1813-1815 the Netherlands had the advantage over Belgium in 1830 of the ‘age-old’ link with the House of Orange. In 1831 Leopold I had to ‘invent’ the Belgian monarchy and actively construct the bond with Belgium as a territory and a nation, while William I was seemingly able to write himself effortlessly into the illustrious Orange dynasty. That was the primary and sole reason, for the British, why he was the right man in the right place. Even though the Netherlands had no monarchical tradition, the *stadhouder* culture and the bond between the House of Orange and Great Britain sufficed to establish a new royal house in the spirit of the Holy

4 Paul Schroeder, *The Transformation of European Politics 1763-1848* (Oxford 1994); Johannes Paulmann, *Pomp und Politik. Monarchenbegegnungen in Europa zwischen Ancien Régime und Erstem Weltkrieg* (Paderborn 2000);

Marc Jarrett, *The Congress of Vienna and its Legacy: War and Great Power Diplomacy after Napoleon* (London 2013); Brian Vick, *The Congress of Vienna: Power and Politics after Napoleon* (Cambridge, Mass. 2014).

Alliance, aimed at the higher goal of maintaining peace and order in Europe. Thus the (United) Kingdom of the Netherlands was created over the heads of the people, not only over the heads of the population in the South, but also over the heads of the people in the North. After all, the major objective of the United Kingdom of the Netherlands was to guarantee the balance of power in Europe and the need to contain France, as the *boulevard de l'Europe contre la France* under the patronage of Great Britain.

Any prefiguration of a 'nation' was entirely absent during the creation phase and, for fifteen years, the United Kingdom was neither formed nor unified, on the contrary. Once the independence of the new state had been recognised, the powers did not interfere in the administration or internal affairs of the 'amalgam'. It became a monarchy with a constitution, in which the revolutionary principle of popular sovereignty had no place and, according to the letter of the Dutch constitution, still has no place. The constitution of 1814 is indeed the direct blueprint of the current constitution in the Netherlands. In addition to the signature of William Frederick himself, it carried the seal of the man who, in 1813, had doggedly devoted himself to the return of the House of Orange, Gijsbert Karel van Hogendorp.<sup>5</sup>

### ***La monarchie constitutionnelle représentative, sous un chef héréditaire in Belgium***

Gijsbert Karel van Hogendorp and William Frederick wrote the constitutions of 1814 and 1815 themselves, in a sense, while Leopold had to put up with the Belgian constitution. He was in no way party to its writing and had had no say at all in its formulation. The liberal component of the Belgian revolution was expressed in the ways in which the new nation wanted to decide for itself with regard to its form of government and its head of state, without being dictated to by the Great Powers or by any pretender to the throne. Any form of royal absolutism was excluded; there was a broad consensus in public opinion in that respect. The National Congress was formed to issue a constitution 'in the name of the people'. The representatives in that institution had to be elected in accordance with the principle of popular sovereignty. However, the right to vote was restricted to a select electoral college of slightly fewer than fifty thousand men who either paid high enough taxes or had a university degree. All told, the debates in the National Congress on the new form of government lasted four days, from 19 to 22 November 1830. There was talk of a *monarchie*

5 N.C.F. van Sas and Henk te Velde (eds.), *De eeuw van de Grondwet. Grondwet en politiek in Nederland, 1798-1810* (The Hague 1998); J.H. Worst, 'Koning Willem I. Het begin van ons "grondwettig volksbestaan"', in: C.A. Tamse and Els Witte (eds.),

*Staats- en natievorming in Willem I's koninkrijk (1815-1830)* (Brussels, Baarn 1992) 56-76; Bart van Poelgeest, 'Tussen oud en nieuw. Het ontwerpen van de grondwet als een rechtshistorisch mozaïek', in: De Haan et al., *Een nieuwe staat*, 67-75.





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On 21 September 1815 on the Koningsplein in Brussels, King William I was inaugurated and he was present at a Te Deum in the Cathedral of St. Michael and St. Gudula. Before this the King opened a session of the States General in the city hall. There the adapted constitution was accepted. On this occasion he wore the coronation robe, then still with a high collar.

J.N. Gibèle (1775-after 1836) after J. Paelinck (1781-1839).

Koninklijke Verzamelingen, Koninklijk Huisarchief  
The Hague.

*républicaine*, which was understandable in a context in which there was a general wariness of the absolute monarchy. For the majority of the congress members, the only essential difference between a republic and the tempered constitutional monarchy was the heredity of the head of state. For them, in the Belgian reality of 1830, the utopia of a republic was simply not feasible. The realism of 183 congress members won over 13 die hard republicans. *La monarchie constitutionnelle représentative, sous un chef héréditaire* was chosen as the new form of government. Two days later, with an almost equally large majority of votes, the House of Orange-Nassau was excluded from the Belgian throne forever.<sup>6</sup>

On 22 April 1831, in London, a delegation from the National Congress asked Leopold von Saxe-Cobourg to become king of the Belgians. He asked his good friend, Lord Durham, advocate of the Reform Bill in England, for advice. Leopold had already formed his own opinion of the Belgian constitution: 'it is mad in opposition and hatred of Kingcraft, the object was to make the creature as like a president as possible'. Even though he had major objections to the democratic content of the constitution and the drastic limitations of the king's power from the outset, eventually, at the end of June 1831, he accepted. At that point he had already been elected in the National Congress by a vast majority of 152 of the 196 votes as the hereditary king of the Belgians: a more paradoxical situation is difficult to imagine, given the fact that Leopold had no links at all with the new Kingdom and had only ever passed through it, at most.<sup>7</sup>

Three months after the arrival of 'these Belgians' in London, on 21 July 1831, at the Koningsplein in Brussels, Leopold I was sworn in as the first king of the Belgians. It was the same place where, sixteen years earlier, William I had sworn allegiance to the constitution and taken the crown as King of the Netherlands. In his *Histoire de Belgique*, the renowned Belgian historian Henri Pirenne, contrasted the inauguration of Leopold, in which there was no crowning, with the 'official' and 'cool' ceremony for William, underlining the fact that the new monarch enjoyed the support of the people.<sup>8</sup> And it was that 'people' that Leopold was again to rely on to expand the constitutionally highly limited royal power in practice. In relying on the direct line between king and people, he was to found a populist form of kingship. After all, the representative parliamentary democracy, with the growing role of political struggle, *assemblées*, parties and public opinion, was as wasted on him as it was on William I. Leopold thus developed a model of kingship that the German legal historian, Martin Kirsch, in his comparative typology referred to as 'monarchical constitutionalism'.<sup>9</sup> This type of monarchy was to come into use all over Europe, first and foremost in England. We can attribute this

6 Deneckere, *Leopold*, 190-191.

7 *Ibid.*, 192-204.

8 Henri Pirenne, *Histoire de Belgique* (Brussels 1932)

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9 Martin Kirsch, *Monarch und Parlament im 19. Jahrhundert. Der monarchische Konstitutionalismus als europäischer Verfassungstyp – Frankreich im Vergleich* (Göttingen 1999).

important political transfer to the close, intimate family ties between Leopold and Victoria and Albert, his niece and nephew. Until 1917 the House of Windsor was indeed called the House of Saxe-Coburg, a fact that has entirely slipped British (and European) collective memory. The new formula for royal power, so aptly worded by the liberal journalist Walter Bagehot in his classic *The English Constitution*, written in 1867, was partly introduced under the influence of Leopold. As King of the Belgians he presented himself as neutral, impartial arbitrator who stood above the melee and political conflict. Behind the façade of the symbolic or ‘decorative’ king, in Bagehot’s terms, however, Leopold also exercised ‘efficient’ political power. Bagehot referred explicitly (and approvingly) to Leopold as an example of a shrewd king ‘with great talents’, who exercised ‘an enormous amount of influence’ in Belgium by discreetly using the resources at his disposal. That amounted to the effective use of the three rights of the sovereign in a constitutional monarchy: ‘the right to be consulted, the right to encourage and the right to warn’, however minimal that might appear.<sup>10</sup> The Belgian historian Jean Stengers in his historical analysis of the role of Belgian kings also stresses how Leopold not only adroitly exploited the limited power the constitution offered him, but behind the scenes also discreetly used his influence on ministers and politicians to strengthen the royal position in the parliamentary system.<sup>11</sup> The leitmotif of the modern constitutional monarchy – *Le Roi règne, mais ne gouverne pas* – rests on the constitutional unaccountability of the king. Article 64 of the Belgian constitution stipulates that no act by the King can have any effect without countersign by a minister, and to this day this is the cornerstone of the Belgian constitutional structure with regard to the role of the monarchy. It is on this very point of ministerial responsibility that the 1831 Belgian constitution fundamentally differed from the Dutch constitutions of 1814 and 1815. Not coincidentally, it was this very element that prompted virulent political conflict in the build-up to the Belgian revolution of 1830.

### Ministerial responsibility as a divisive element in the period 1815-1830

The 1814 Dutch constitution provided for limited individual ministerial responsibility, more specifically for illegal acts of government. An individual minister could be interrogated by parliament on his powers in the States General. He could also, according to the British example, have a complaint lodged against him in the Supreme Court and be dismissed. That way, the king, as head of the executive power, remained unaffected. For legal acts of government however, the king was responsible and accountable

10 Walter Bagehot, *The English Constitution* (Oxford 2009 [1867]) 66.

11 Jean Stengers, *L'Action du Roi en Belgique depuis 1831: Pouvoir et influence* (Brussels 1992).



to parliament. Therefore, in the letter of the constitution, he was the real (and not simply decorative) head of the executive and untouchable in that position. There was no question of collective ministerial responsibility, as in England, whereby the ministers ‘covered’ the king for all acts of government with their countersign: the full political responsibility therefore lay with the government. The king’s unaccountability did have its price though: the monarch was no longer above the constitution and, through the government, always had to bow to the majority in parliament, which had the last word. In this constitutional model, the king – as in England – conceded power, as government leader, to the prime minister. For William Frederick, who, as we mentioned, wrote the constitution, such a scenario was entirely out of the question. This leads us to the conclusion that we cannot speak of a modern constitutional monarchy in the Netherlands between 1814 and 1815.

Even in its diluted form however, ministerial responsibility in the 1814 constitution went too far for William Frederick. On this issue he differed in opinion fundamentally from Gijsbert Karel van Hogendorp. If it had been up to Van Hogendorp, parliament would have been able to play the role of a counterforce against the crown from the outset. The States General, as guardian of the constitution, would have to stand up for the rights of the people and had a *right of impeachment* for governmental acts in contravention to the constitution. From that point of view the king was also subject to the constitution.<sup>12</sup>

That Van Hogendorp was unable to push through his interpretation of the constitution and William I on the other hand, denied *any* form of ministerial responsibility in practice until his abdication in 1840, relates to the theory that the liberal political philosopher Benjamin Constant developed on its functioning; or, to put it a better way, with the use that the liberal and Catholic opposition in the South was able to make of Constant’s theory as a tool for gaining power in the States General. This is at least the thesis that the jurist Peter van Velzen put forward in his bulky law historical thesis of 2005. In 1815 North and South had an equal number of seats in the States General, 55 each, while the South had a demographic preponderance (3.4 million inhabitants) in relation to the North (1.8 million inhabitants). According to Van Velzen, William I had irrational fears of a coup by the Belgians in the States General. Although Van Hogendorp had specifically wanted to avoid this interpretation of Constant’s theory, it appeared to present an opportunity for the Belgians, through the ministers, to limit the power of the king and, with the aid of the Catholics in the North, establish an preponderance in the Second Chamber. Fears of such a scenario alone encouraged William I to deny his own constitution and present himself, against the times, as a pre-modern autocrat.

12 Peter van Velzen, *De ongekende ministeriële verantwoordelijkheid. Theorie en praktijk 1813-1840* (Nijmegen 2005) 28.

He was supported in this by Minister of Justice Van Maanen, who stated that the king stood above the constitution and was not subjected to it. From 1815 onwards therefore, William I insisted that his ministers were accountable only to him and not to Parliament. In 1820, he even boastfully claimed that he could rule without ministers. After all, he had the power to appoint anyone as a minister. 'As I, and I alone, am the man who acts and who is responsible for the actions of the government'.

Van Velzen's conclusion that the issue of ministerial responsibility evoked resistance primarily in the South and far less in the North is interesting. It was primarily the Belgian liberals who made an issue of it and launched three attacks, in 1816, 1820 and finally, with the support of the Catholics, in 1829. The inspiration of Benjamin Constant was clear in numerous publications, particularly in *L'Observateur politique, administratif, historique et littéraire de la Belgique*, a journal published by the theologian and philosopher Pierre-François van Meenen, also referred to as 'Montesquieu II' or 'the Belgian Constant'. His critical articles on constitutional law and constitutional monarchy also gained influence in the North, through comments by Johannes Kinker, Dirk Donker Curtius and G.W. Vreede, but did not lead to political action as in the South. Why not? Van Velzen tends to exaggerate the controversy around ministerial responsibility as the sole divisive element that explains the Belgian revolution. In his view, William I could only persist in the denial of his own constitution because he received the tacit support of the northern half of the Second Chamber as a defensive nationalistic reflex against the militant Belgians.<sup>13</sup> For Els Witte however, in her recent analysis of the Belgian Revolution, the criticism of William I's model of government is only one of the numerous elements in a complex of factors.<sup>14</sup>

In *De metamorfose van Nederland*, Niek van Sas reassesses the late eighteenth and early nineteenth century as the period in which modern politics, with a growing sense of civic responsibility and political activism, originated: in the North, too, a ground current of liberal opposition to William I emerged. As in other publications, Van Sas puts the North-South divide as the only, all-decisive factor into perspective. Although he devotes little attention to more 'disruptive' forms of political activism in the North, in Dutch opinion papers such as *De Bijenkorf* and *Noordstar* in 1822-1829 he does trace a growing tendency of liberalism that prevailed over the national differences. The constitutional criticism and, not least, the issue of ministerial responsibility was actually the crucial link between North and South.<sup>15</sup> In his book, *Schielijk, Winzucht, Zwaarhoofd en Bedaard. Politieke discussie en oppositievorming 1813-1840*, Jeroen van Zanten unfortunately does

13 Van Velzen, *Ministeriële verantwoordelijkheid*.

14 Els Witte, *De constructie van België 1828-1847* (Tielt 2005) 51-52.

15 N.C.F. van Sas, *De metamorfose van Nederland. Van oude orde naar moderniteit 1750-1900* (Amsterdam 2005) 437-455.

not elaborate further on the preconditions for a united liberal opposition in North and South, on the issue of ministerial responsibility for example. On the other hand, he does seek an answer to the question why in the Northern Netherlands the opposition to 'William I's system', however substantial it might have been in the years 1818-1820 and 1827-1832, had such little effect. Van Zanten states that the opposition in the North, in principle, was no less 'liberal' or 'constitutional' than that in the Southern Netherlands. The difference lay in the practical translation of the criticism of William I's government. In the South, a massive petition movement emerged, with concrete political demands; in the North the response was more reactive, divided and therefore less decisive.<sup>16</sup>

Should we then, nonetheless conclude that national differences between North and South in 1830 prevailed over the growing influence of liberalism and the development of modern democratic politics? Only a thorough transnational comparative perspective transcending the narrow historiographic nationalism can provide good answers here. In any event, we have to give a negative answer to the question of whether and to what degree the new Belgian constitutional monarchy of 1830-1831 held William I's 'heritage' intact: on the contrary, the constitutional definition of kingship in Belgium, for that time, was an ultra-liberal, modern answer to the 'William I system'.

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16 Jeroen van Zanten, *Schielijk, Winzucht, Zwaarhoofd en Bedaard. Politieke discussie en*

*oppositievorming 1813-1840* (Amsterdam 2004) 251-258 and 335-341.